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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,159	09/23/2002	John Eric Tkaczyk	RD-28334	4870

41838 7590 10/20/2008

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ART UNIT	PAPER NUMBER
3626	

MAIL DATE	DELIVERY MODE
10/20/2008	PAPER

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/065,159
Filing Date: September 23, 2002
Appellant(s): TKACZYK ET AL.

Patrick S. Yoder
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08/26/2008 appealing from the Office action mailed 11/28/2007, 02/11/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1-40.

Claims 1, 14 have been amended subsequent to the final rejection.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

As per Appellant's arguments on page 2-3 that the rejection of claims 1-16 under 35 USC 112, second paragraph was raised for the first time in the Final Rejection, Examiner submits that this rejection was imposed in part due to Appellant's claim amendment and arguments therefor.

Nevertheless, Appellant's amendment after final rejection was allowed entry to correct these deficiencies, and Examiner has withdrawn certain portions of this rejection as appropriate. Please see sections 6, 9 below for a detailed description of the remaining ground of rejection.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

GROUNDS OF REJECTION NOT ON REVIEW

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim(s) 1-16 is/are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellant regards as the invention.

Claim 1 recites "a server system coupled to a centralized database and at least one client system" (line 2-3). Examiner is unable to ascertain if Appellant intends to recite structural limitations within the scope of a method claim, or if Appellant intends to recite structural and functional limitations to the extent necessary to give meaning to the method steps.

For purposes of applying prior art, Examiner interprets this limitation to recite a method capable of providing a server coupled to a centralized database and at least one client system.

All claims dependent thereon, namely claims 2-13, fail to remedy these deficiencies, and are therefore rejected for at least the same rationale as applied to parent claim 1 above, and incorporated herein.

As per claims 14-16, these claims are rejected for at least the same rationale as applied to claims 1-13 above, and incorporated herein.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,196,970	BROWN	3-2001
4,737,921	GOLDWASSER	4-1988
2002/0042723	RICE	4-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim(s) 1-16 is/are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellant regards as the invention.

Claim 1 recites “tracking” (line 11). Examiner cannot ascertain the meaning of this limitation when read in light of the specification.

For purposes of applying prior art, Examiner interprets this limitation to recite updating data.

All claims dependent thereon, namely claims 2-13, fail to remedy these deficiencies, and are therefore rejected for at least the same rationale as applied to parent claim 1 above, and incorporated herein.

As per claims 14-16, these claims are rejected for at least the same rationale as applied to claims 1-13 above, and incorporated herein.

Additional clarification is requested.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim(s) 1-3, 6-9, 13-14, 16-19, 22-25, 29-30, 32-33, 36-38 is/are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (6196970).

As per claim 1, Brown teaches a method (Abstract) capable of:

(a) collecting, analyzing, and aggregating (It is noted that collecting, analyzing, and aggregating are considered to be “managing”) research data (It is noted that data is considered to be “information”) during the source of research testing (Abstract), wherein

the research testing is capable of being performed for a clinical trial (column 1 line 13 to column 3 line 10) or a clinical study (column 3 line 6);

(b) being used by a set of medical experts (Figure 1 label 121) and a set of research subjects (Figure 1 label 111) (It is noted that the set of medical experts and the set of research subjects, collectively, are considered to be "a clinical research study entity");

(c) providing a server-based system (Figure 1 label 100)) to the set of medical experts and the set of research subjects via a communications network (Figure 1 label 140), wherein the server-based system comprises a server device (Figure 1 label 130), a set of research subject devices (Figure 1 label 110), and a set of medical research expert devices (Figure 1 label 120) (It is noted that the set of research subject devices and the set of medical research expert devices are considered to be "at least one client system");

the method comprising:

(a) receiving, at the server device, information received from a research subject (It is noted that information received from a research subject is considered to be "CS information relating to at least one patient involved in a clinical study") (Figure 2a label 210), wherein:

(i) the information is received by the subject manipulating an input (It is noted that manipulating an input is considered to be "being entered") (Figure 2a label 207), thereby responding to a protocol (It is noted that a protocol is considered to be part of “a user selected template”) (Figure 2a label 207-208) displayed by an output

element (Figure 2a label 206), wherein the output element is part of the research subject device (Figure 1 label 112);

(ii) information concerning the type of data to be collected from the set of subjects (column 6 line 1-3) and the protocol (It is noted that information concerning the type of data to be collected and the protocol are considered to be "the user selected template") are sent to a database for storage (Figure 2a label 203-204), wherein:

(1) the subject views and responds to some portion of the protocol that was sent (It is noted that the information concerning the type of data to be collected and the protocol collectively determines what the subject views and respond to. It is further noted that Brown teaches that the database is capable of accumulating data even after the data is forwarded (column 7 line 27-29)) (column 6 line 19-20);

(2) the server device records the information concerning the type of data to be collected and protocol in the database (Figure 2a label 204);

(3) the server device records the modified protocol in the database (Figure 2b label 218);

(4) steps (2)-(3) are repeated (Figure 2b label 221), thereby creating a plurality of protocols stored in the database (It is noted that nowhere does Brown teach deleting, or otherwise expunging or purging, protocol from the database);

(5) the medical research expert either leave the protocol unchanged or modify the protocol as necessary (It is noted that a protocol is "selected" by the medical research expert for implementation) (column 7 line 3-5);

(5) the database is connected to a plurality of research subject devices (It is noted that the database connected to a plurality of research subject devices is considered to be "a centralized database") (Figure 1 label 110);

(6) each protocol includes receiving data from the subject according to a research testing goal (It is noted that a research testing goal is considered to be "specific clinical studies") (column 7 line 45-48);

(b) storing the information received from the subject in the database (Figure 2a label 210);

(c) repeatedly collecting information from the research subject (It is noted that repeatedly collecting information is considered to be "tracking CS information") (Figure 2b label 221);

(d) repeatedly collecting information from the research subject (It is noted that repeatedly collecting information is considered to be "updating the centralized database periodically", wherein information collected from the research subject is considered to be "newly received information") (Figure 2b label 221), wherein all information collected from the research subject resides in the database (column 7 line 27-29);

(e) providing the collected information to interested parties (It is noted that providing information to an interested party is considered to be "providing information in response to an inquiry") (column 6 line 52-54, column 7 line 29-30).

As per claim 2, Brown teaches aggregating, statistically analyzing, and sending from the server device to the medical research experts the information received from

the research subject devices (It is noted that the aggregated and analyzed data is considered to be "at least one report summarizing information and findings") (column 6 line 45-51, Figure 2a label 211-212).

As per claim 3, Brown teaches aggregating, statistically analyzing, and sending from the server device to the medical research experts the information received from the research subject devices (It is noted that the research subject is considered to be "at least one patient involved in a clinical study") (column 6 line 45-51, Figure 2a label 211-212).

As per claim 6, Brown teaches:

(a) determining and sending research information and protocol to the subject (Figure 2a label 205) (It is inherent that at least a portion of the protocol selected by the medical research expert is sent to the subject to provide the subject with instructions to operate the medical device, as discussed below);

(b) displaying the information received in (a) to the subject (column 6 line 18-23, Figure 2a label 206, Figure 1 label 112);

(c) responding to the protocol with data from the patient's medical device (column 4 line 9-12) (It is noted that data from the patient's medical device is considered to be "utilized medical equipment information").

Insofar as the remainders of the limitations of claim 6 are concerned, Brown need not teach these limitations in view of the limitation "at least one of".

As per claim 7, Brown teaches:

(a) responding to the protocol with data from the patient's medical device (column 4 line 9-12) (It is noted that data from the patient's medical device is considered to be "utilized medical equipment information"), aggregating and analyzing the data (Figure 2a label 211) (It is noted that aggregating and analyzing data is considered to be "compiling a data report");

(b) sending the information received from the subjects to the various medical research experts (column 6 line 47-50, Figure 2a label 212) (It is noted that the various research experts are considered to be "a predesignated party").

As per claim 8, Brown teaches:

(a) evaluating the information by the protocol, and updating the information according to protocol logic as appropriate (column 6 line 55-60, Figure 2a label 213-214) (It is noted that a protocol residing on a server device is considered to be "at least one computer program").

As per claim 9, Brown discloses the method of claim 1, wherein presenting the protocol to subjects for response comprises:

(a) responding to the protocol with data from the patient's medical device (column 4 line 9-12) (It is noted that data from the patient's medical device is considered to be "utilized medical equipment information");

(b) sending the information received from the subjects to the various medical research experts (column 6 line 47-50, Figure 2a label 212).

Insofar as the remainders of the limitations of claim 9 are concerned, Brown need not teach these limitations in view of the limitation “at least one of”.

As per claim 13, Brown teaches:

(a) connecting the research subject devices and the medical research expert devices to the server device via a communications network (Figure 1 label 140), wherein the network connects remote devices (Abstract) (It is noted that a network connecting remote devices is considered to be a “wide area network”).

Insofar as the remainder of the limitations of claim 13 is concerned, Brown need not teach these limitations in view of the limitation “includes one of”.

As per claim 14, Brown teaches a method (Abstract) capable of:

(a) collecting, analyzing, and aggregating (It is noted that collecting, analyzing, and aggregating are considered to be “managing”) research data (It is noted that data is considered to be “information”) during the source of research testing (Abstract), wherein the research testing is capable of being performed for a clinical trial (column 1 line 13 to column 3 line 10) or a clinical study (column 3 line 6);

(b) being used by a set of medical experts (Figure 1 label 121) and a set of research subjects (Figure 1 label 111) (It is noted that the set of medical experts and the

set of research subjects, collectively, are considered to be "a clinical research study entity");

(c) providing a server-based system (Figure 1 label 100)) to the set of medical experts and the set of research subjects via a communications network (Figure 1 label 140), wherein the server-based system comprises a server device (Figure 1 label 130), a set of research subject devices (Figure 1 label 110), and a set of medical research expert devices (Figure 1 label 120) (It is noted that the set of research subject devices and the set of medical research expert devices are considered to be "at least one client system");

(d) coupling a plurality of medical appliances to the system (column 5 label 11-13, Figure 1 label 114, column 6 line 27-36, Figure 2a label 207);

the method comprising:

(a) determining and sending research information and protocol to the subject (Figure 2a label 205) (It is inherent that at least a portion of the protocol selected by the medical research expert is sent to the subject to provide the subject with instructions to operate the medical device, as discussed below), wherein the protocol can include calling for data obtained by coupling the client device with another medical device (It is noted that calling for data obtained from a medical device is considered to be “protocols for operating the at least one medical device”) (Abstract), wherein the plurality of medical appliances comprises a location sensing device and a digital video camera (column 6 line 35) (It is noted that a location sensing device and a digital video camera is considered to be “image data”), and wherein each protocol includes receiving data

from the subject according to a research testing goal (It is noted that a research testing goal is considered to be “specific clinical studies”) (column 7 line 45-48);

(b) coupling the medical appliance to the port of the subject device in response to the protocol (column 6 line 26-30) (It is noted that coupling the medical appliance in response to the protocol is considered to be “operating the at least one medical device… based on the entered protocols”), wherein the digital video camera is capable of capturing images (column 6 line 35);

(c) receiving, at the server device, information received from a research subject (It is noted that information received from a research subject is considered to be "CS information relating to at least one patient involved in a clinical study") (Figure 2a label 210), wherein:

(i) the information is received by the subject manipulating an input (Figure 2a label 207), thereby responding to a protocol (Figure 2a label 207-208) displayed by an output element (Figure 2a label 206), wherein the output element is part of the research subject device (Figure 1 label 112);

(ii) information concerning the type of data to be collected from the set of subjects (column 6 line 1-3) and the protocol are sent to a database for storage (Figure 2a label 203-204), wherein:

(1) the subject views and responds to some portion of the protocol that was sent (column 6 line 19-20);

(2) the server device records the information concerning the type of data to be collected and protocol in the database (Figure 2a label 204);

(3) the server device records the modified protocol in the database (Figure 2b label 218);

(4) steps (2)-(3) are repeated (Figure 2b label 221), thereby creating a plurality of protocols stored in the database;

(5) the medical research expert either leave the protocol unchanged or modify the protocol as necessary (column 7 line 3-5);

(5) the database is connected to a plurality of research subject devices (It is noted that the database connected to a plurality of research subject devices is considered to be "a centralized database") (Figure 1 label 110);

(6) each protocol includes receiving data from the subject according to a research testing goal (It is noted that a research testing goal is considered to be "specific clinical studies") (column 7 line 45-48);

(d) storing the information received from the subject in the database (Figure 2a label 210);

(e) repeatedly collecting information from the research subject (Figure 2b label 221);

(f) repeatedly collecting information from the research subject (Figure 2b label 221), wherein all information collected from the research subject resides in the database (column 7 line 27-29);

(g) providing the collected information to interested parties (column 6 line 52-54, column 7 line 29-30);

(h) aggregating, statistically analyzing, and sending from the server device to the medical research experts the information received from the research subject devices (column 6 line 45-51, Figure 2a label 211-212).

As per the set of claim(s): 16, 17, 18, 19, 22, 23, 24, 25, 29, 30, 32, this set of claim is rejected for substantially the same rationale as applied to the rejection of the set of claim(s): 6, 1, 2, 3, 6, 7, 8, 9, 13, 14, 16, respectively, and incorporated herein.

As per claim 17, the output element of the research subject device (Figure 1) capable of displaying portions of the protocol (Figure 2a) is considered to be "a browser".

Claims 33, 36-38 recite a computer-readable medium containing software thereon, such that when the instructions contained therein are executed by the computer's processor, the functionality of the software is realized in the form of the method as recited in claims 1-3, 6-9.

It is noted that the scope of claims 33, 36-38 is substantially enveloped within the scope of claims 1-3, 6-9. See MPEP 2106.01(I). Therefore, claim 33, 36-38 are rejected for at least the same rationale as applied to claim 1-3, 6-9, and incorporated herein.

Specifically, the limitations "adding" and "deleting" data within a database is substantially enveloped by the limitation "updating".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4-5, 15, 20-21, 31, 34-35 are rejected under 35 U.S.C. 102(b) as anticipated by Brown or, in the alternative, under 35 U.S.C. 103(a) as obvious over Brown in view of Goldwasser (4737921).

As per claim 4, Brown teaches coupling a plurality of medical appliances to the system (column 5 label 11-13, Figure 1 label 114, column 6 line 27-36, Figure 2a label 207), wherein the plurality of medical appliances comprises a location sensing device and a digital video camera (column 6 line 35) (It is noted that a location sensing device and a digital video camera is considered to be “a computed tomography device”).

Insofar as the limitations “a radiography device”, “a positron emission tomography device”, and “an ultrasound imaging device” are concerned, Brown need not teach these limitations in view of the limitation “at least one of”.

Notwithstanding the above, Brown further teaches coupling a variety of medical appliances to the system (column 5 line 10-13) via a port (column 6 line 27-36).

Goldwasser teaches that using medical devices for medical research (column 2 line 48 to column 3 line 2), wherein the medical devices comprise computed tomography imaging technique (column 1 line 23-39), X-rays (column 1 line 17), PET (column 2 line 2), and ultrasound (column 2 line 14-16), is well known in the art.

All component parts are known. The only difference is the combination of “old elements into a single embodiment.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the teachings of Goldwasser within the embodiment of Brown, since the operation of the medical devices is in no way dependent on the clinical study, and a standard medical device may be used with a clinical study system via a port to achieve the predictable result of sending additional data to the server (Brown; column 5 line 12-14).

As per claim 5, Brown teaches:

(a) determining and sending research information and protocol to the subject (Figure 2a label 205) (It is inherent that at least a portion of the protocol selected by the medical research expert is sent to the subject to provide the subject with instructions to

operate the medical device, as discussed below), wherein the protocol can include calling for data obtained by coupling the client device with another medical device (It is noted that calling for data obtained from a medical device is considered to be "protocols for operating the at least one medical device") (Abstract);

(b) displaying the information received in (a) to the subject (column 6 line 18-23, Figure 2a label 206, Figure 1 label 112);

(c) coupling the medical appliance to the port of the subject device in response to the protocol (column 6 line 26-30) (It is noted that coupling the medical appliance in response to the protocol is considered to be "operating the at least one medical device based on the entered protocols");

(d) receiving by the server device information sent from the subject device (Figure 2a label 208-210), wherein the information sent comprises data from a digital video camera (column 6 line 35) (It is noted that data from a digital video camera is considered to be "diagnostic images").

Insofar as the limitation "x-rays" is concerned, Brown need not teach this limitation in view of the limitation "at least one of".

Notwithstanding the above, Goldwasser discloses that using medical devices for medical research (column 2 line 48 to column 3 line 2), wherein the medical devices comprise X-rays (column 1 line 17), is well known in the art.

All component parts are known. The only difference is the combination of "old elements into a single embodiment.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the teachings of Goldwasser within the embodiment of Brown, since the operation of the medical devices is in no way dependent on the clinical study, and a standard medical device may be used with a clinical study system via a port to achieve the predictable result of sending additional data to the server (Brown; column 5 line 12-14).

As per the set of claim(s): 15, 20, 21, 31, 34, 35, this set of claim is rejected for substantially the same rationale as applied to the rejection of the set of claim(s): 4, 4, 5, 5, 4, 5, respectively, and incorporated herein.

Claim(s) 10-11, 26-27, 39-40 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Rice (20020042723).

As per claim 10, Brown teaches:

(a) storing research information in the database, the information comprising information received from the subjects (column 7 line 29-30) (It is noted that it is inherent that the information comprises a list of patients).

Brown does not teach inquiring about a specific patient.

Rice teaches correlating FDA alerts with patient data (Abstract), wherein a list of patients is displayed (Figure 3).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Rice within the invention as described by the disclosure of Brown with the motivation of alerting doctors and nurses of patients who are affected by the FDA alerts (Rice; paragraph 0007), and preventing patient deaths by failing to respond to incoming data in real time (column 2 line 45-67).

As per claim 11, Brown teaches:

(a) storing research information in the database, the information comprising information received from the subjects (column 7 line 29-30) (It is noted that it is inherent that the information comprises a list of patients).

Brown does not teach inquiring about a specific patient.

Rice teaches correlating FDA alerts with patient data (Abstract), wherein a list of patients is displayed (Figure 3).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Rice within the invention as described by the disclosure of Brown with the motivation of alerting doctors and nurses of patients who are affected by the FDA alerts (Rice; paragraph 0007), and preventing patient deaths by failing to respond to incoming data in real time (column 2 line 45-67).

Insofar as the remainder of the limitations of claim 11 is concerned, Brown and Rice need not teach these limitations in view of the limitation “at least one of”.

As per the set of claim(s): 26, 27, 39, 40, this set of claim is rejected for substantially the same rationale as applied to the rejection of the set of claim(s): 10, 11, 10, 11, respectively, and incorporated herein.

Claim(s) 12, 28 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Appellant Admitted Prior Art (AAPA).

It is noted that the official notice taken in the Office Action mailed 06/21/2007 is taken to be AAPA because Appellant failed to properly traverse Examiner's assertion in the reply responsive thereto.

As per claim 12, Brown teaches providing the information to interested parties (column 6 line 52-54, column 7 line 29-30), wherein the information is stored in the database (column 7 line 29-30).

Brown does not teach accessing, searching, or retrieving data from the database for display.

AAPA teaches that:

(a) forming a query;

(b) transmitting the query to the a database;

(c) parsing of the query by the database;

(d) retrieving information stored in the database as indicated by the result of (c);

(e) returning the result of (d) for display;

are old and well established in the art of database.

All component parts are known. The only difference is the combination of “old elements into a single embodiment.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the teachings of AAPA within the embodiment of Brown, since the operation of processing database queries is in no way dependent on the clinical study method, and a standard database management system may be used with any clinical study system comprising a database to achieve the predictable result of obtaining the data contained therein.

As per the set of claim(s): 28, this set of claim is rejected for substantially the same rationale as applied to the rejection of the set of claim(s): 12, respectively, and incorporated herein.

(10) Response to Argument

In the appeal brief filed 08/26/2008 Appellant makes the following arguments:

1) On page 11, Appellant argues that claims 1-16 are rejected under 35 USC 112, second paragraph for reciting "tracking", and that no other rationale under 35 USC 112, second paragraph is currently imposed.

2) On page 13-14, Appellant argues that “tracking” data is definite.

3) On page 13, Appellant argues that Examiner interprets “tracking” to be “cross-referencing” data.

4) On page 13, Appellant argues that “tracking” and “cross-referencing” are separate and distinct actions.

5) On page 13-14, Appellant argues that tracking component 66 need not necessary be limited only to performing the tracking of data in the centralized database 20.

6) On page 14, Appellant argues that “tracking” is not “updating”.

7) On page 16-25, Appellant argues that the applied art do not teach “a template” and “a plurality of templates”.

8) On page 17, Appellant asserts the advantage of managing clinical study information in a manner that is less difficult, time consuming, and costly.

9) On page 17-21, Appellant argues that the “protocol” of Brown is not the same as a “template” as recited.

10) On page 21-23, Appellant argues that the applied art do not teach a ”template”.

11) On page 21, Appellant asserts the advantage of a “template” as being able to allow for the organization of CS data in a standardized format, thereby facilitating subsequent viewing, retrieval, and analysis by medical experts.

12) On page 24 Appellant argues that the applied art do not teach "protocols" and "templates" as distinct features.

13) On page 14 24-25, Appellant argues that the applied art do not teach using the same “template” throughout the course of a study.

14) On page 25-30, Appellant argues that the applied art do not teach “a plurality of templates”.

15) On page 30-32, Appellant argues that the applied art do not teach “each of the plurality of templates configured to correspond to specific clinical studies”.

16) On page 36-38, Appellant argues that the Official Notice taken in the Office Action mailed 06/21/2007 was properly traversed.

The remainder of Appellant's arguments on page 24 merely rehashes arguments identified above, and incorporated herein.

Examiner will respond below to the above arguments in the order presented in the appeal brief.

1) Page 2-4 of the Office Action mailed 11/28/2007 clearly set forth four (4) rationales for the rejection of claims 1-16. On page 10-11 of the appeal brief Appellant states that only three (3) rationales were applied.

As such, Appellant omits the fourth rationale, such rationale has not been withdrawn, and is outlined above in section 6 as not being on review.

2) Claim 1 recites:

- "storing CS information received at the server system in the centralized database;
- tracking CS information stored in the centralized database;
- updating the centralized database periodically with newly received information to maintain CS information".

Appellant further asserts support for "tracking" in paragraph 28 of the specification.

The specification as originally filed discloses:

[0028] Figure 3 illustrates an example configuration of database 20 within database server 16 of server system 12 shown in Figure 1. Database 20 is coupled to several separate computer software components within server system 12 which perform specific tasks. In the example embodiment, server system 12 includes a collection component 64 for collecting data from users in database 20, a tracking component 66 for tracking data, and a displaying component 68 to display information. Tracking component 66 tracks and cross-references data, including modifying existing data.

Appellant provides no definition for “tracking”. When interpreted in light of the specification and the level of ordinary skill in the art, Examiner is unable to determine the scope of “tracking CS information stored in the centralized database”.

Examiner submits that a database is storage capable of storing data and providing the stored data for future retrieval. Therefore, this limitation as recited is indefinite because Examiner cannot determine what "tracking" encompasses.

3) Referring to page 3 of the Office Action mailed 02/11/2008, and referencing paragraph 0028 of the specification, Appellant’s specification discloses:

Tracking component 66 tracks and cross-references data, including modifying existing data.

Examiner has provided a best-effort attempt to find any controlling definition in the specification; however, no controlling definition was found.

Page 3 of the Office Action mailed 02/11/2008 stated:

Based on Applicant's disclosure, Applicant provides no definition for "tracking". From Applicant's disclosure, tracking component 66 performs two distinct functionalities: 1) tracks data, and 2) cross-references data. Based on the grammar of paragraph 28, Examiner interprets "including" to refer to both "tracks" and "cross-references".

Based on this discussion, Examiner found no controlling definition for "tracking". Instead, Examiner was only pointing out to Appellant that no controlling definition exists in the specification as purported by Appellant.

Therefore, Appellant's assertion that Examiner equates "tracking" to "cross-referencing" data is inaccurate.

In fact, Examiner encounters great difficulty in determining the scope of "tracking". Had Examiner been reasonably able to equate "tracking" to any known term, this rejection would not have been imposed.

4) Examiner neither agrees nor disagrees with Appellant's argument that "tracking" is separate and distinct from "cross-referencing" because Examiner cannot ascertain the meaning of "tracking" in the context as claimed.

Additionally, Appellant has provided no definition for "tracking" in the specification or in the arguments themselves.

Therefore, assuming *arguendo* that "tracking" is different from "cross-referencing", this argument, even if found to be valid, still renders "tracking" indefinite because Appellant has provided no definition for "tracking" in the context of the claim.

5) In response to Appellant's argument that the references fail to show certain features of Appellant's invention, it is noted that the features upon which Appellant relies (i.e., tracking component 66) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In so far as "tracking" is recited, claim 1 recites "tracking CS information stored in the centralized database".

Because claim 1 does not recite any specific structure for tracking, e.g. a software tracking component, Examiner interprets that any structure capable of performing the recited functionality is encompassed by this limitation.

Examiner submits that Appellant's discussion on page 13-14 regarding "tracking" is deficient because:

a) Appellant provides no definition for "tracking";

b) Appellant provides arguments directed towards an unclaimed software tracking component 66.

Therefore, whether an unclaimed software tracking component 66 is limited to tracking or not is not germane to the rejection of claim 1 under 35 USC 112, second paragraph because Examiner still cannot determine the meaning of "tracking" within the context of the claim.

6) As discussed above, Appellant provides no definition for "tracking", either the specification or the arguments themselves, even after Appellant has been given ample opportunity to do so.

As discussed above, Appellant's argument that "tracking" is not the same as "updating", even if found to be persuasive, still does not render "tracking" definite.

Examiner specifically requested guidance from Appellant in determining the scope of "tracking" data. Appellant has not provided any definition. Examiner then performed a best-effort determination of the scope of the claim by relying in part on Appellant's specification which discloses that tracking data comprises modifying existing data. Examiner also relies on Microsoft Computer Dictionary, Fifth Edition which defines "track" as "in data management, to follow the flow of information through a manual or an automated system".

Based on the specification and the level of ordinary skill in the art, Examiner submits that "tracking" is interpreted, to the extent possible, to be updating data.

Examiner submits that if Appellant disagrees with the best-effort interpretation applied by Examiner with no guidance from Appellant, Appellant should provide his own controlling definition for Examiner's consideration. Instead, to date, Appellant's only response has been do disagree with the best reasonable interpretation submitted by Examiner; Appellant fails to provide any controlling definition, either from the specification or the level of ordinary skill in the art at the time the invention was made, to facilitate claim interpretation.

As such, Examiner respectfully submits that all reasonable efforts to cooperate with Appellant have been exhausted by Examiner.

7) Claim 1 recites “the CS information being entered through a user selected template displayed on the client system, wherein the user selected template is selected from a plurality of templates stored in a centralized database".

Appellant provides no definition for “template”.

In determining the scope, Examiner relies on Webster’s II Dictionary, Second Edition, which defines “template” as “a gauge or pattern… used in making or copying something accurately”.

Brown teaches that:

(a) information concerning the type of data to be collected from the set of subjects (column 6 line 1-3) and the protocol are sent to a database for storage (Figure 2a label 203-204);

(b) the subject views and responds to some portion of the protocol that was sent (column 6 line 19-20).

Examiner submits that the information concerning the type of data to be collected and the protocol collectively are considered to be “a template”, wherein the system of Brown uses the information and the protocol, as specified by the medical research expert, in conjunction with software, to accurately extract information from the research subject.

In particular, Examiner submits that the computer using a selected protocol implemented in software to extract meaningful information from a patient is considered to be a “template” because data can be extracted in a consistent manner.

Additionally, Examiner submits that “the CS information being entered through a user selected template displayed on the client system” and “the user selected template is selected from a plurality of templates stored in a centralized database" are not positively recited as method steps. Instead, these limitations amount to functional limitations of the method at best. As such, Examiner submits that Brown teaches using a computer to extract information from the patient according to a protocol, and thereby anticipates or otherwise renders the claimed invention obvious.

Examiner submits that in making this argument, nowhere in the specification or in the arguments themselves does Appellant provide a definition for “template”. Therefore, the applied art teaches “template” based on the broadest and most reasonable interpretation attributable to the claim in view of the specification and the level of ordinary skill in the art.

8) Appellant asserts three (3) advantages of the claimed invention:

a) less difficulty;

b) less time consuming;

c) less costly.

First, Brown teaches a solution that overcomes the problems associated with collecting data (column 2 line 32-44):

> A first problem in the known art is that collection of data from subjects or participants in research or clinical trials often involves obtaining and analyzing fuzzy assessments from subjects who are not necessarily under the continual observation of a clinician or other personnel. Indeed, many subjects (such as the controls in clinical trials) are not under the care of a physician at all, but merely report to an expert researcher periodically for testing and analysis. Such testing and analysis frequently involves self-reporting a number of parameters. A subject's answer to an inquiry often involves the making of a fuzzy assessment of physical state, mood or quality of life. Accordingly, there is a need for a method to evaluate and standardize such fuzzy self-assessments.

According to Brown, the automated solution overcomes the problems of fuzzy answers, thereby overcoming the difficulty with traditional methods of collecting data.

Second, Brown teaches a solution that is capable of responding in realtime (column 2 line 45-67):

A second problem in the known art is that researchers are unable to respond to incoming data in real time. In known methods, data from research or clinical trials is collected and stored for analysis at a later time. Frequently, researchers or lab technicians enter their observations in a paper copy of a log book or lab notebook. Often these results are entered near the end of an experiment. This practice makes it impossible for an investigator to evaluate the data or change the experimental design. While researchers may have an approximate idea as to the general trend of incoming data, they are frequently unable to respond to that trend until the data is analyzed, well after any opportunity for altering the method of collection or the nature of the data collected. Accordingly, researchers are unable to modify a clinical protocol while in process. This inability to evaluate and respond to incoming data during data collection can create conditions that are dangerous for the subjects of the research. It is believed that morbidity and mortality associated with evaluation of new drugs would be substantially reduced if researchers could respond during the research, such as to halt the clinical trial or adjust the drug dosage. Accordingly, there is a need to evaluate and respond to subjects in real time.

According to Brown, the automated system is capable of providing real time data and allowing the researchers to respond in the same manner.

Third, Brown teaches using an automated system to replace humans (column 4 line 63-67):

FIG. 1 shows a block diagram of a system **100** to collect and analyze data from human subjects engaged in medical
65 research using a protocol or other intelligent message, which acts in place of a researcher, investigator, clinician or other medical expert.

It is clear that by replacing humans, and especially medical experts, with machines, cost savings can be achieved.

Examiner submits that these advantages of the prior art are explicitly recognized by Appellant on page 18-21 of the appeal brief when Appellant admits that Brown overcomes these problems known in the prior art. Therefore, it is clear that the solution taught by Brown provides the same advantages as asserted by Appellant.

Therefore, the asserted advantages do not overcome the prior art.

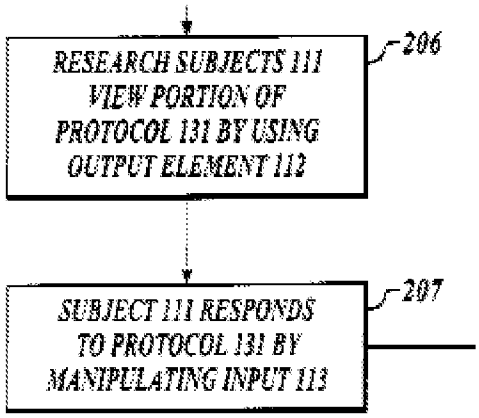
9) Appellant provides The Random House Dictionary of the English Language Unabridged, which defines "protocol" as "[a] plan for carrying out a scientific study or a patient's treatment regimen".

While Examiner does not disagree with this definition, Examiner submits that the word “protocol” from Brown is not being interpreted in a vacuum, but instead "protocol" is interpreted in light of the entire disclosure of Brown and the level of ordinary skill in the art at the time the invention was made.

So while Appellant’s definition of “protocol” may be correct, Brown is also free to be his own lexicographer to the extent that such usage is clear to one of ordinary skill in the art.

In this case, Appellant's characterization of the applied art is incomplete and inaccurate for the following reasons.

First, the protocol of Brown is meant to be implemented in software and presented to a research subject for response (Figure 2a label 206-207):

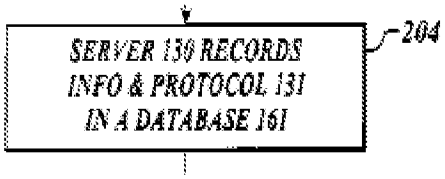


Examiner submits that software capable of being deployed on a computing device to accurately assess the research subject's responses is considered to be a "template" based on the definition afforded by Webster's II Dictionary, Second Edition because the computer can accurately replicate the desired of the medical research experts

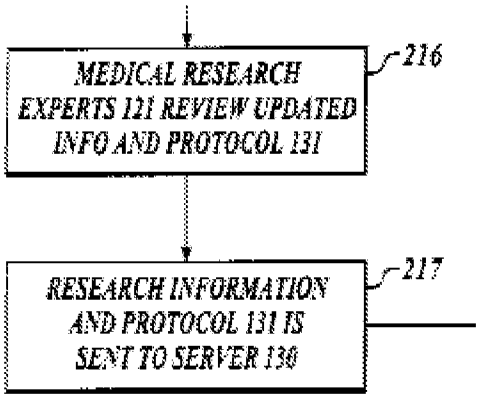
Webster's II Dictionary, Second Edition, defines "template" as "a gauge or pattern… used in making or copying something accurately", as discussed above.

Therefore, the protocol used to extract information from a research subject in a consistent manner desired by a research expert is considered to be "the CS information being entered through a user selected template displayed on the client system".

Second, the database is capable of storing the protocol and responses thereto (Figure 2a label 204):



Brown further teaches that the medical research expert is capable of modifying the protocol and storing the changes in the database (Figure 2b label 216-217):



Therefore, when a protocol is presented to the research subject, the system retrieves a protocol from a database containing therein a plurality of protocols, and is considered to be “the user selected template is selected from a plurality of templates stored in a centralized database”.

Examiner notes that Appellant is fully capable of providing definitions, as is evident by the definition for “protocol” provided by Appellant. Examiner therefore submits that Appellant fails to provide a definition for “tracking” and “template” within the context of the claim.

10) In response to Appellant's argument that the references fail to show certain features of Appellant’s invention, it is noted that the features upon which Appellant relies (i.e., fields that prompt a user to enter specific CS (clinical study) data 92 or to display

specific CS data 92, e.g. a patient's name, sex, medical history, weight, height age) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Appellant asserts paragraph 0035 of the specification as providing support for "template":

> [0035] CRCS 10 is utilized to collect, track, display, and disseminate real time information regarding CS data for a clinical research entity. In one embodiment, CRCS 10 utilizes a plurality of standardized templates for inputting CS data 92 for a clinical study. CRCS 10 also utilizes the plurality of standardized templates to display CS data 92 on client system 14. In one embodiment, each standardized template is in a Java * format, a C++ computer program format, or a C computer program format. In another embodiment, each standardized template is in an eMatrix * format (eMatrix is a registered trademark of MatrixOne, Inc. Chelmsford, Massachusetts). Each standardized template contains fields that prompt a user to enter specific CS data 92 or displays specific CS data 92 for a user to view and analyze. These fields may also capture and display workflow for a specific clinical study.

Based on the specification, Examiner submits that the cited section appears to be exemplary embodiments and non-committal definitions of a "template". *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) ("Interpretation of descriptive statements in a patent's written description is a difficult task, as an inherent tension exists as to whether a statement is a clear lexicographic definition or a description of a preferred embodiment. The problem is to interpret claims in view of the specification' without unnecessarily importing limitations from the specification into the claims.").

In particular, Appellant has not asserted that the cited portion provides a lexicographic definition, and the specification itself does not appear to be a clear lexicographic definition. On page 21 Appellant asserts:

> Indeed, in the present context, a standardized template is clearly defined as having a set of fields allowing users to enter or view specific CS data.

Nonetheless, Appellant does not clearly assert that paragraph 0035 provides a controlling lexicographic definition, and it is not clear from the prosecution history that Appellant intends for there to be a controlling definition for “template”.

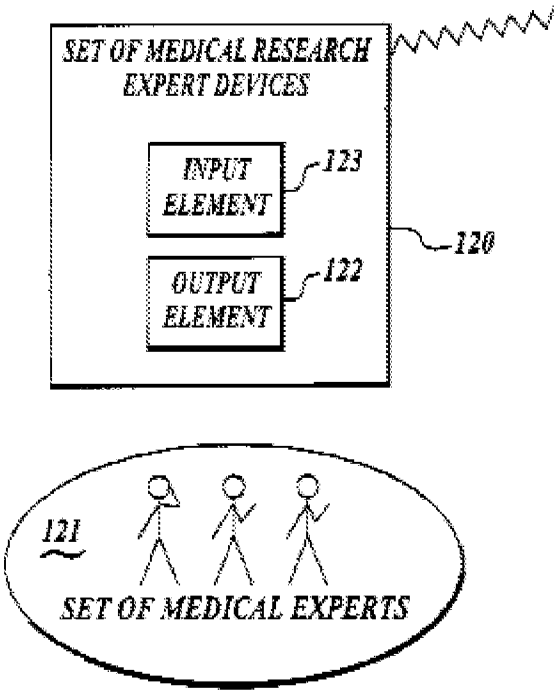
Therefore, Examiner interprets the specification to be a description of a preferred embodiment at best absent any evident from Appellant of a controlling lexicographic definition.

On page 23 Appellant also asserts support for "template" as replacing paper-based system in paragraph 0002 of the specification:

[0002] At least some known clinical research entities conduct clinical studies with selected patients to evaluate the effectiveness of clinical applications and medical equipment utilized in the treatment of these patients. These clinical studies include the collection of a significant amount of data from a plurality of patients including at least one of a patient name, a patient sex, a patient medical history, a patient weight, a patient height, a patient age, a patient ID number, a modality of treatment and/or diagnosis, a type of medical application utilized, medical equipment utilized in treatment and/or diagnosis, treatment and/or diagnosis results, modeled images, x-rays, manufacturing information and documents relating to the medical equipment utilized, engineering information and documents relating to the medical equipment utilized, marketing information and documents, and other documents or information relating to the treatment and/or diagnosis of a patient within a specific clinical study. Historically, such data has been maintained in paper form. For clinical research entities that conduct multiple clinical studies with multiple patients maintaining such data in a manner wherein it may be effectively utilized by a plurality of people can be difficult and costly.

Examiner submits that this section also provides no controlling definition for “template”.

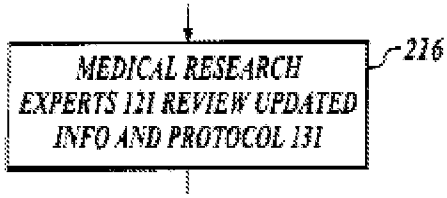
11) Brown teaches that the system is capable of providing computing devices to medical experts (Figure 1 label 120):



Brown further teaches storing and processing information by computers (Figure 2a-b).

Therefore, Examiner submits that the data collected by Brown is “standardized” in that the data is processed by computer and stored in a database.

Brown further teaches that the medical expert is capable of viewing, retrieving, and analyzing the stored data using the computing devices (Figure 2b label 216):



Therefore, the asserted advantages do not overcome the applied art.

12) In response to Appellant's argument that the references fail to show certain features of Appellant's invention, it is noted that the features upon which Appellant relies (i.e., generating a protocol from a template) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Assuming *arguendo* that this limitation flows inherently therefrom, and while Appellant may use different terminology from the applied art, the same features are described in Brown.

In particular, Brown teaches using a protocol to extract information from a research subject in a consistent manner (Figure 2a label 206-207), as discussed above and incorporated herein. Brown further teaches modifying the protocol based on the collected information (column 1 line 1-5):

7

At a step **216**, the medical research expert **121** review the updated information and protocol **131** and the other information input by the set of research subjects **111** and either leave the updated research information and protocol unchanged or modify it as necessary.

According to Brown, software displays questions to the research subject and retrieves answers responsive thereto. Based on the collected answers, the medical experts are capable of modifying the protocol for the research study.

While Brown uses a broader "protocol" to describe this technique of extracting information from the research subject, Examiner submits that this feature is the same as the "template" claimed by Appellant.

13) In response to Appellant's argument that the references fail to show certain features of Appellant's invention, it is noted that the features upon which Appellant relies (i.e., using the same template throughout the course of a study) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Assuming *arguendo* that this limitation flows inherently therefrom, Brown teaches that the medical research expert is capable of leaving the protocol unchanged (column 7 line 1-5):

7

At a step **216**, the medical research expert **121** review the updated information and protocol **131** and the other information input by the set of research subjects **111** and either leave the updated research information and protocol unchanged or modify it as necessary. In an alternative embodiment, step **216** does not take place.

This is made explicit in Brown's alternative embodiment, which does not allow the expert to modify the protocol at all.

Examiner submits that the only difference between the preferred embodiment and this alternative embodiment is the omission of step 216. Therefore, this alternative embodiment would still anticipate the claim.

14) Claim 1 recites “the user selected template is selected from a plurality of templates stored in a centralized database".

Examiner submits that storing a plurality of templates and selecting a template from the stored plurality of templates are not positively recited in the claim.

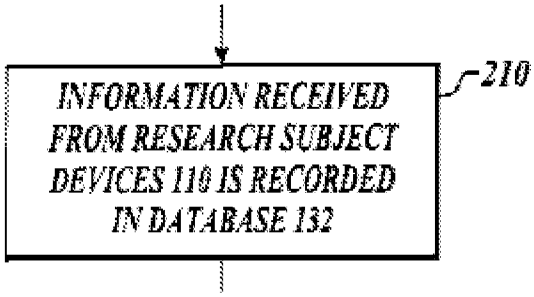
To the extent that these features are recited, Examiner interprets this limitation to recite a functional limitation, wherein the system executing the method is capable of selecting a template from a plurality of templates.

As discussed above, Brown teaches that the protocol may be changed, or may be left the same at the discretion of the research expert (column 7 line 1-5):

7

At a step **216**, the medical research expert **121** review the updated information and protocol **131** and the other information input by the set of research subjects **111** and either leave the updated research information and protocol unchanged or modify it as necessary. In an alternative embodiment, step **216** does not take place.

Brown further teaches storing the protocol in the database and research subject responses thereto (Figure 2a label 210):



Examiner submits that Brown teaches "a plurality of templates" for the following reasons.

First, even though a template is modified, Brown nowhere teaches expunging old versions of the template from the database. Therefore, Examiner submits that these old versions of the templates are stored in the database.

Second, the information received from the research template is answers to the questions contained in the protocol. Therefore, it is inherent that in order for the answers to be meaningful, the answers have to be stored together with the questions therefor. Otherwise, the answers are meaningless if the answers are not accompanied by the questions.

For these reasons, Examiner submits that the applied art teaches "a plurality of templates".

On page 26 Appellant asserts that using multiple protocols for a same study would be counterintuitive to one of ordinary skill in the art.

Examiner submits that Brown is using different versions of the same protocol, and the different versions amount to “a plurality of templates”.

On page 27-28 Appellant asserts that Brown is working with a single protocol.

This argument is substantially addressed above, and incorporated herein.

On page 28 Appellant asserts that old versions of the protocols would never be used again.

While Examiner does not dispute this assertion, Examiner submits that using a new version of the protocol fully meets the limitation "selected from a plurality of templates stored in a centralized database".

On page 28-29 Appellant provides exemplary discussion of never reverting to the old versions of a protocol.

Examiner submits that the data recorded under the older versions of the protocol would be stored in the system of Brown, and therefore fully meets the limitation of "selected from a plurality of templates stored in a centralized database" even though the older versions were never candidates for implementation.

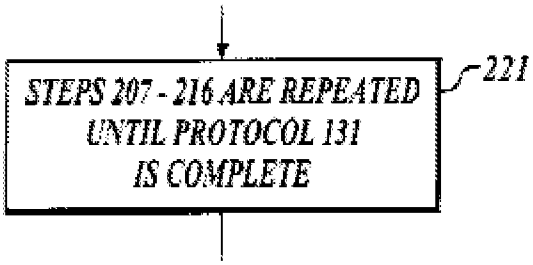
On page 29-30 Appellant asserts that Examiner's position is contradictory because a protocol is either modified, i.e. a single protocol, or selected from a plurality of protocols.

Brown teaches modifying the protocol based on need (column 7 line 1-5):

7

At a step **216**, the medical research expert **121** review the updated information and protocol **131** and the other information input by the set of research subjects **111** and either leave the updated research information and protocol unchanged or modify it as necessary. In an alternative embodiment, step **216** does not take place.

Brown further teaches repeating until the protocol is complete (Figure 2b label 221):



According to Brown, after the protocol is changed at least once, and all loops thereafter do not change the protocol, this embodiment fully meets the claimed limitation because the protocol is consistently used throughout the study, and there exists at least two protocols in the system (reads on "selected from a plurality of protocols").

Examiner submits that this embodiment is fully and explicitly disclosed by Brown, and is not a contradiction adopted by Examiner.

15) Claim 1 recites "each of the plurality of templates configured to correspond to specific clinical studies".

Examiner interprets this limitation to recite that each template is assigned a "specific" study. Therefore, embodiments wherein at least one template is not assigned to any study would not meet the claimed limitation, whereas embodiments wherein each template is assigned at least one study fully meet this limitation.

Appellant appears to interpret this claim as "each of the plurality of templates configured to correspond to ***different, separate, and distinct*** clinical studies".

Examiner submits that this feature is clearly not recited.

Therefore, even assuming *arguendo* that all protocols of Brown refer to the same study, this embodiment fully meets the claim limitation because each protocol is assigned a study, albeit the same study.

In response to Appellant's argument that the references fail to show certain features of Appellant's invention, it is noted that the features upon which Appellant relies (i.e., assigning each template to a different study, wherein no two templates are assigned to the same study) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

This is clear because “specific” does not mean “separate and distinct", as argued by Appellant.

16) Official Notice was previously taken in the Office Action mailed 06/21/2007.

On page 24-25 of the response thereto, Appellant makes the following arguments:

> *Claims 12 and 28*
>
> The Examiner rejected dependent claims 12 and 28 as being unpatentable over Brown in view of Official Notice. Specifically, the Examiner stated that "(a) forming a query; (b) transmitting the query to the database; (c) parsing of the query by the database; (d) retrieving information stored in the database as indicated by the result of (c); [and] (e) returning the result of (d) for display; is old and well established in the art of database." Office Action, page 14. However, as discussed above, Brown does not disclose a *selecting a template from plurality of templates stored in a centralized database*, as recited by parent claims 1 and 17, and Official Notice does not cure these deficiencies. As such, claims 12 and 28 are believed to be clearly patentable at least by virtue of their dependency from an allowable parent claim.
>
> Moreover, Applicants challenge the Examiner's use of Official Notice. Even if the general query steps of claims 12 and 28 could be inferred from unidentified art, the Examiner still bears the burden of establishing a *prima facie* case based upon a reasonable combination with Brown and some likelihood of success. In this case, Brown does not disclose entering information into a database in the manner set forth in claim 1 (or 17). As such, the query steps of claims 12 and 28 do not appear combinable with Brown. The mere citation of Official Notice does not provide the requisite likelihood of success in this regard, and is therefore traversed.

No further arguments were provided in this response or any responses thereafter.

In the Office Action mailed 11/28/2007, Examiner stated that the noticed facts are considered to be admitted prior art because Appellant failed to properly traverse the Official Notice.

MPEP 2144.03(C) reads as follows: "***To adequately traverse such a finding [of official notice], an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art***. See 37 CFR 1.111(b). See also Chevenard, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate… ***If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art*** because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate" (emphasis added).

Appellant's traversal in the response filed 09/21/2007 and 01/26/2008 appears to be inadequate because Appellant does not specifically point out the supposed errors, nor did Appellant state why the noticed fact is not considered to be common knowledge

or well-known in the art. Appellant also failed to do so in the appeal brief after being advised of the requisite standards for traversing official notice.

Assuming *arguendo* that Appellant's traversal was adequate, Examiner submits class 707 containing therein thousands of references directed towards database query processing.

In particular, Examiner submits class 707, and particularly subclass 3-4, the definition of which states "subject matter directed to methods of searching for (i.e., querying) data stored as a database in a computer or digital data processing system, including sequential searching, primary and secondary index searching, and bit-map searching of inverted lists or topological maps" and "subject matter directed to methods for translating an external access to a database or files into internal access to the database or files, and translation of an external query format into an intermediate or internal query format".

Brown further teaches a database server (Figure 1 label 130, 132). Brown further teaches data stored in the database for review (column 7 line 27-29).

Based on the evidence presented above, Examiner submits that processing a database query within the embodiment of Brown is predictable and is fully within the grasp of one of ordinary skill in the art.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/T. N./

Examiner, Art Unit 3626

/C Luke Gilligan/

Supervisory Patent Examiner, Art Unit 3626

Conferees:

/C. G./

Supervisory Patent Examiner, Art Unit 3626

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Appeals Conference Specialist